IN THE JUSTICE OF THE PEACE COURT NO. 16 OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

MICAH CUFFEE, Defendant/Counterclaimant Below, Appellant, v. LEOLA ROBERTS, Plaintiff Below, Appellee.	:	**C.A. No. JP16-11-001260**

TRIAL DE NOVO

Submitted: April 28, 2011
Decided: May 17, 2011

Leola Roberts, Plaintiff/Appellee, *pro se*.

Micah Cuffee, Defendant/Appellant/Counterclaimant, *pro se*.

ORDER

Murray, J
Sherlock, J
Wall, J

On April 28, 2011, this Court, comprised of the Honorable James A. Murray, the Honorable Michael J. Sherlock and the Honorable Robert B. Wall, Jr., acting as a special court pursuant to 25 *Del. C.* § 5717(a)[1] convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Leola Roberts (hereinafter referred to as Plaintiff), against Micah Cuffee (hereinafter referred to as Defendant or Counterclaimant), as well as a counterclaim and Motion to Dismiss filed by the Defendant. For the following reasons the Court enters judgment in favor of the *Defendant/Counterclaimant.*

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession and accrued rent. This action is based on the Defendant's failure to pay rent. Trial was held on March 30, 2011 and judgment was entered in favor of the Plaintiff.[2] Thereafter, the Defendant filed a timely appeal of the Court's order pursuant to 25 *Del. C.* § 5717(a), a Motion to Dismiss and a counterclaim pursuant to

[1] 25 *Del. C.* § 5717(a). *Nonjury trials.* With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

[2] *Roberts v. Cuffee*, Del J.P., C.A. No. JP16-11-001260, Sweet, J. (March 31, 2011).

25 *Del. C.* § 5717(b).[3] Trial *de novo* was thereafter scheduled and held on April 28, 2011.

Pre-trial Motion to Dismiss

Defendant asserts the demand notice required by 25 Delaware Code was not served properly upon him and is overstated in the amount demanded. The Court held the Defendant's Motion in abeyance and proceeded forward with trial.

Discussion

At the initiation of the lease, Defendant offered a deposit of $10,000.00 to reassure Plaintiff that regular monthly rent payments would occur. Defendant's prior rent payment history was not commendable. Defendant was unable to produce the initial $10,000.00 offering and thereafter counter-offered $6,777.00 to the Plaintiff which was accepted and received. The statute at 25 *Del. C.* § 5110 states; "... wherein an application is made by a prospective tenant to lease a dwelling unit ... landlord or owner of the dwelling unit shall not ask for, nor receive, any 'assurance money'[4]

[3] § 5717(b). An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which the claimant intends to raise at the hearing which were not raised in the initial proceeding.

[4] "...[F]or purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, pet deposit or similar deposit, reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations."

or other payment which is not an application fee, security deposit, pet deposit, or similar deposit…". Section 5514 of Title 25 subsection "(a)(2)" states; "[N]o landlord may require a security deposit in excess of one month's rent where the rental agreement is for 1 year or more." The lease before the Court is for a period of one year commencing December 1, 2010 and ending November 30, 2011. Per item #5 of the lease agreement the monthly rent is $1,600.00 due on or before the first of each month. Defendant's $6,777.00 initial payment had been a lump sum payment which was divided as follows; rent for December 2010, January 2011, the pro-rated amount of $373.31 for seven days rent in November 2010, security deposit[5] of $1,600.00 and last month's rent in the amount of $1,600.00. This transaction is in violation of 25 *Del. C.* § 5514(a)(2) & (a)(3) in the amount of $1,600.00. Additionally, the Defendant's offer to pay "last month's rent" and Plaintiff's acceptance of same created a contract that conflicts with provisions contained in the Landlord/Tenant Code and therefore is prohibited pursuant to 25 *Del. C.* § 5101.[6]

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[5] 25 *Del. C.* § 5141(23). "Security Deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement or for any part thereof.

[6] "…[A]ny rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given without the void provision.

The testimony and evidence of Plaintiff identifies the excess deposit as money to assure payment for last month's rent.[7] Where a lease agreement/term is for one year a landlord is not entitled to receive a month's security deposit plus last month's rent. Plaintiff had an obligation to return any excess deposit which was not allowable pursuant to the Landlord/Tenant Code. Whereas the Plaintiff retained this excess deposit it was incumbent upon her to apply it to the Defendant's rent when a shortage occurred since she did not immediately return it to the tenant.

At the time Plaintiff issued the demand notice to pay rent on February 11, 2011, Plaintiff was still in possession of the $1,600.00 over payment and should have applied it to the Defendant's rent. By failing to do so, the Defendant was placed in the position of being delinquent in his rent. In fact, Defendant was not delinquent due to the Plaintiff holding an excess month's rent which should have been returned to the Defendant. Whereas Plaintiff issued a demand notice demanding $1,600.00 for rent for the month of February as well as other monetary claims, said notice is overstated as a result of her retention of Defendant's over payment of $1,600.00.[8]

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[7] Plaintiff's Exhibit #1. "The following is the break down of the wire dollar amount: Prorated rent for November - $373.31 ($53.33 a day for 7 days) December's rent - $1,600 January's rent $1,600 Last month rent - $1,600 Security Deposit - $1,600 Total: $6,773.31."

[8] Plaintiff's Exhibit #2. 14 Day Notice To Pay Rent. Plaintiff demands the follows amount: February rent $1,600.00, February late fee $60.00, Past due electric bill $216.00.

Defendant states Plaintiff has refused to accept rent for the month of April 2011 as a result of the Court's prior decision.

Counterclaim

Defendant counterclaimed for reimbursement in the amount of $225.00 for removal of trash and miscellaneous debris in the garage of the rental unit. Plaintiff had a contractor prepared and scheduled to remove the trash and debris from the garage, however, Defendant advised Plaintiff that he would clean the garage. Defendant testified he never viewed the garage before assuming this responsibility and now feels he is entitled to reimbursement because the job of cleaning it was much bigger than he anticipated. We disagree. Defendant assumed the responsibility for removal and cleaning the garage voluntarily and as such any expense incurred is his and not that of the Plaintiff.

Additionally, Defendant asserted a claim for reimbursement in the amount of $206.00 for an unpaid City of Dover water bill incurred by the previous tenant Tiffany Floyd. The testimonies and evidence of the parties support this claim.[9] An incoming tenant does not have the responsibility of satisfying the previous tenant's debts for utilities which act as a lien on the property thereby preventing the incoming tenant from receiving utility

[9] Plaintiff's Exhibit #4 City of Dover Information Inquiry. "WATER DUE FOR FLOYD IS 206.67 AND IF SERVICE IS CNP DO NOT PUT BACK IN OWNERS NAME HAS NEW TENNANTS –MR CUFFEE –APT".

services until such debt is satisfied. This is the responsibility of the landlord. Defendant is entitled to reimbursement for this claim.

Conclusion

Based on the Court's fact-finding inquiry, the Court's above-referenced conclusions of law and the Plaintiff's failure to prove her claim by a preponderance of evidence, the Court by unanimous verdict hereby enters ***JUDGMENT for the DEFENDANT.***

As to the Defendant's counterclaim; the Court by unanimous verdict finds the Defendant has proven his counterclaim by a preponderance of evidence in part. The Court hereby enters ***JUDGMENT for the DEFENDANT/COUNTERCLAIMANT.***

Judgment amount: ***$206.00***

Whereas Defendant prevailed at trial based on the merits of the evidence his Motion to Dismiss is now *MOOT.*

IT IS SO ORDERED this **17th** day of **May, 2011.**

Judge James A. Murray

Judge Michael P. Sherlock

Judge Robert B. Wall Jr.